awarded $45,000 general damages. The other case is a Singapore case, *Lim Yeow Hong and Anor.* v. *Oh Pang*[3] where $7,500 was awarded as general damages, $5,500 for the partial rupture of the urethra.

Woods v. *King* does not, to my mind, provide a useful guide. The facts there are different. In the instant case P.W. 2, 8 years old, a school boy, has no earnings of his own. The likelihood of being impotent is only 25%. There is however, a likelihood of being sterile. In *Woods* v. *King* Edmund Davies J. after pronouncing that —

"The proper basis is that of fair and reasonable compensation for past, present and future pain and suffering, interference with what I call the ordinary amenities of life, and financial loss",

took into consideration the fact that the plaintiff was a vigorous man still following the manly sport of rock-climbing which he had learned as a commando and that the plaintiff also enjoyed the gentler recreation of gardening. In this case, there is no evidence of special amenities of life enjoyed by P.W. 2 and any attempt to consider future amenities of life would largely be a matter of conjecture. There is also no evidence of any financial loss.

I am of the opinion that whilst the proper basis should be of fair and reasonable compensation for past, present and future pain and suffering, in this particular case, some consideration may also be given on the basis of a fair and reasonable compensation for some financial expenses which may be incurred in pursuing medical treatment.

Ghulam Hussein's case may also be distinguished from the present case. There the plaintiff, a male, 27 years old, a Telecoms Department storeman was earning $125.85 a month. The injuries he suffered were more serious than the present case. There was complicated fracture of the pelvis with rupture of the urethra and partial tears of the rectum and the caecum and a lacerated wound 5 inches long on the right thigh. He had to undergo one operation on admission for the injuries to the bladder and bowel. He also developed a pathological dislocation of the right hip and surgery showed that he had a complete rupture of the prostatic urethra and extensive rupture of the pelvis. According to the expert, he would be unable to pass urine or motion normally and another operation would have to be performed on him to make his life more comfortable. He was also likely to remain impotent and sterile and after discharge from the hospital, there was little likelihood that he could lead a comparatively normal life.

The facts in the Singapore case are almost on all fours with the present case except that the damage to the urethra suffered by P.W. 2 is more extensive. P.W. 2 also had to undergo a number of operations and probably more to come. There is very little doubt that P.W. 2 suffered considerable pain and discomfort and will perhaps suffer more pain and discomfort.

Taking into consideration the injuries suffered and bearing in mind the factors I mentioned earlier, I consider it fair and reasonable compensation that a sum of $20,000 be awarded as general damages.

I therefore enter judgment for the first plaintiff a sum of $20,000 as general damages. I also enter judgment for the second plaintiff a sum of $2,355.90 as special damages and costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*

OOI TEIK CHIN v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) February 27, 1970]

[Kota Kinabalu — Criminal Appeal No. 2 of 1970]

Criminal Law and Procedure — Appeal — Appeal on ground that verdict was against weight of evidence — Not sufficient ground of appeal — Criminal Procedure Code, 1959 s. 259(2).

In this case it was alleged in an appeal against a conviction that the learned magistrate was wrong in his findings of facts and that the verdict was therefore against the weight of evidence.

Held, dismissing the appeal: it was not a sufficient ground of appeal to allege that the verdict was against the weight of the evidence. Under section 259(2) of the Criminal Procedure Code, 1959, it is for the appellant to show that the "conviction is unreasonable or cannot be supported having regard to the evidence".

Cases referred to:-

(1) *Goh Ah Too* v. *R.* [1956] M.L.J. 139.

(2) *Aladesuru* v. *R.* [1956] A.C. 49.

MAGISTRATE'S CRIMINAL APPEAL

Alex Khoo for the appellant.

Stephen Foo for the respondent.

Lee Hun Hoe J.: This is an appeal against conviction. I dismissed the appeal and stated that I would give my reasons. I do so now. In the petition it is alleged that the learned magistrate was wrong in his findings of facts and the "verdict was therefore against the weight of the evidence". This is the only ground of appeal.

Care should be taken in the preparation of petition and the wordings of the statute should be followed. Under section 259(2) of the Criminal Procedure Code it is for the appellant to show that the "conviction is unreasonable or cannot be supported having regard to other evidence."

Mallal's Criminal Procedure, 4th Edition, page 769 has this passage: —

"In *Goh Ah Too* v. *R.*[1] the grounds of appeal was stated to be that the 'verdict of the jury was against the weight of the evidence.' The court drew counsel's attention to the provision of sub-section (1) of the Court of Criminal Appeal Ordinance and to the decision of the Privy Council in *Aladesuru* v. *R.*[2] where it was laid down that in order to succeed an appellant must show, in the words of the statute, that the 'verdict is unreasonable or cannot be supported having regard to the evidence.' The Privy Council there was of the opinion that it was not a sufficient ground of appeal to allege that the 'verdict is against the weight of evidence;' and that the phrase

was inaccurate and could not be properly substituted for the words of the statute."

No application was made to amend the ground so as to conform to the provision of the Code. This is sufficient reason for the appeal to be disposed of. The appeal is on facts. I have perused the record and heard counsel for the appellant and the respondent. I could find no ground to interfere with the verdict. The learned magistrate dealt with the whole case very fairly and carefully. The children had certainly committed a breach of the law by riding two on a bicycle. But that did not mean that the appellant could drive his landrover from behind and without so much as a warning to knock them down. The appellant elected merely to give a statement which deprived the prosecution from testing its veracity by cross-examination. The appellant has failed to show that the learned magistrate was wrong by reason of any error, omission or irregularity which has occasioned a failure of justice. The appeal against conviction is dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. HONG AH HUAT

[A.C.J. (Sharma J.) May 31, 1970]

[Muar — Criminal Revision No. 3 of 1970]

Penal Code, s. 414 — Dishonestly retaining stolen property — Possession soon after theft — Presumption — Evidence Ordinance, 1950, s. 114.

Evidence — Presumption — Possession of stolen goods — Evidence Ordinance, 1950, s. 114, illustration (a).

In this case the evidence showed that the accused had purchased stolen property from the thief. The property were found in his possession. The learned magistrate acquitted the accused as he found there was doubt in the prosecution case.

Held: as the evidence showed that the property had been stolen and that they were recovered from the possession of the accused soon after the theft, there was sufficient evidence to call on the accused for his defence on the charge under section 414 of the Penal Code and the case should be sent back for retrial.

Case referred to:-

(1) *Chevadappa Pujari & Ors.* v. *Emperor* A.I.R. 1945 Bom. 292.

CRIMINAL REVISION.

Sharma J. (delivering oral judgment): The accused was charged under section 411 of the Penal Code in Labis Magistrate's Court Arrest Case No. LA. 191 of 1969 for having dishonestly retained four spray pumps and six tins of paint having reason to believe the same to be stolen. He was also charged in the same court in Arrest Case No. 192 of 1969 for having dishonestly retained motor cycle JF 3912 having reason to believe the same to be stolen. The date of the commission of the offence as mentioned in both the charges was 4th May 1969. The time of the commission of the offence relating to Case LA. 191 of 1969 as mentioned in the charge was 3.20 p.m. at No. 27 Jalan Cheng Poh, Labis, which was the address at which the accused resided. The time of the commission of the offence relating to the case LA. 192 of 1969 was "about 4 a.m." at North Labis Estate. These two cases were tried together and the learned magistrate acquitted and discharged the accused on both the charges without calling for the defence. I had called for these files under my revisionary powers and on perusal of the record in the two cases I found that the reason given by the learned magistrate in not calling upon the accused to enter his defence was that he found that there was a doubt in the prosecution case on both the charges.

On 25th April 1969 at about 5.30 a.m. when P.W. 1, a supervisor in F.L.D.A., went for muster, his conductor, M. M. Mathews (P.W. 2) reported that the estate's store had been broken into and certain property including the spray pumps and the tins of paint removed from the store. P.W. 1 made a report at the Labis police station at about 7 a.m. Inspector Krishnan (P.W. 3) was the investigating officer in the case and he recovered the property alleged to have been stolen from or near the house of the accused. Abdul Kadir bin Rashid (P.W. 4) was produced as a prosecution witness. In his evidence he said that he was arrested in connection with the house-breaking and theft of the store at the North Labis Estate and that he, with two others, was charged in court for stealing six spray pumps and certain other articles. The other two persons who were jointly charged with P.W. 4 for house-breaking and theft were Mat Sariah and Hashim bin Chik. He further testified that the things stolen from the store of North Labis Estate were sold to the accused for $228 and that the articles were handed to the accused at 5 a.m. P.W. 4 was not cross-examined at all by the defence counsel. Mat Sariah was also produced by the prosecution as P.W. 9 and he admitted that he, P.W. 4 and Hashim bin Chik were convicted for the offence of house-breaking and theft of the spray pumps, paint and the motor-cycle. Hashim bin Chik was tendered for cross-examination by the prosecution but the defence counsel declined to cross-examine him. Undoubtedly P.W.4, P.W. 9 and Hashim bin Chik were accomplices. There was however also evidence given by P.W. 5, P.W. 6, P.W. 7 and P.W. 8. They identified the four spray pumps, Exhibits P6A, P2A, P8 & P2D.

The subject-matter of the charge in Labis Magistrate's Court Arrest Case No. LA. 191 of 1969 was, as I have said earlier, the four spray pumps and six tins of paint. P.W. 3, the investigating officer, went to the house of the accused on the night of 4th May 1969 and it was the accused himself who produced some of the spray pumps from a bush at the back of his house. The accused also led P.W. 3 to a rubber plantation at Jalan Yong Peng, Labis, and produced motor-cycle JF 3912 from among the banana plants. The six tins of paint were also found covered with leaves and it was the accused who led the investigating officer to the place from where they were recovered.

For a charge to succeed under section 411 it must be proved that the accused either dishonestly received the property or having received it honestly retained it dishonestly. So far as the charges in the two cases are concerned, they relate to dishonest retention of stolen property having reason to believe the same to be stolen. The accused had, according to the prosecution